

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Mayor of the District of Columbia, pursuant to the authority set forth in the Film DC Economic Incentive Emergency Act of 2006, effective December 19, 2006 (D.C. Act 16-570, 54 DCR 8) and the Film DC Economic Incentive Act of 2006, signed by the Mayor on December 28, 2006, 54 DCR 984, to be codified at D.C. Official Code §§ 39-501 – 39-502) (collectively, the Act), hereby gives notice of the adoption on an emergency basis of an amendment to Title 1 of the District of Columbia Municipal Regulations (DCMR), by adding a new Chapter 31. The new Chapter 31 to Title 1, DCMR, will establish a procedure for applicants to apply for discretionary grant funding under the Act and the criteria to be used in determining eligibility for grant funding.

This emergency rulemaking is necessary for the immediate preservation of the public welfare, preventing the loss of cultural and artistic development in the District of Columbia which could endanger the business and employment climate of the local entertainment industry if these funds were not allocated to applicants pursuant to the Act supported by this immediate action.

This emergency and proposed rulemaking was adopted by the Mayor and became effective on March 19, 2007, and will expire on June 30, 2007, or upon publication of final rulemaking in the *District of Columbia Register*, whichever occurs first.

The Mayor of the District of Columbia also gives notice of intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *District of Columbia Register*.

Title 1 DCMR is amended by adding a new Chapter 31 – FILM DC ECONOMIC INCENTIVE GRANT PROGRAM, to read as follows:

CHAPTER 31 – FILM DC ECONOMIC INCENTIVE GRANT PROGRAM**3100 AUTHORITY AND SCOPE**

3100.1 The Film DC Grant Program is administered by the Office of Motion Picture and Television Development (OMPTD). The Film DC Grant Program is intended to encourage the use of the District as a site for film and television production, to encourage the hiring of District residents as cast, crew and staff and to support and encourage the use of other District services and equipment companies by the entertainment industry in these productions. This rulemaking describes the standards and procedures under which the OMPTD shall determine whether to provide grant funding to Film DC Economic Grant Program applicants.

3101 DETERMINATION OF FILM DC GRANT PROGRAM ELIGIBILITY

3101.1 The Director of the OMPTD determines whether particular motion picture and television productions and the expenditures associated with those

productions qualify for incentives under the Act. The recipient of the grant will receive an amount not to exceed the lesser of 10% of qualified expenses or 100% of the sales and use taxes paid to the District on the qualified expenses. Grant funds will be disbursed following OMPTD's receipt and approval of the final certified accounting and cost report of production expenditures prepared by the production company as required by § 3101.6(e).

3101.2 In evaluating whether a Project is eligible for grant funding, the Director of the OMPTD will take into consideration the mandatory and discretionary criteria set forth in this section. The OMPTD shall require all applicants to meet the mandatory criteria. The OMPTD will be entitled to give priority or more or less weight to any of the discretionary criteria based on its view of the current needs of the District. The discretionary criteria are not intended to be used in a mathematical equation; consequently, mere compliance with a majority of these discretionary criteria does not guarantee eligibility for Film DC Grant Program funds. The OMPTD may also consider other factors in determining whether a particular project is eligible for grant funding, provided that the additional factors are reasonably related to the goals of the Act.

3101.3 **MANDATORY CRITERIA**

To be eligible for grant funding, the applicant must:

- (a) expend at least \$500,000 in the District on a qualified film project; and
- (b) actively film in the District for a period of five (5) or more days.

3101.4 **DISCRETIONARY CRITERIA**

To determine if a production qualifies for grant funding, the OMPTD will consider:

- (a) the percentage of production to be filmed in the District;
- (b) the extent to which the production has the necessary financing in place to begin production;
- (c) how much of the production budget will be spent in the District;
- (d) the viability of the film distribution plan, including the date the master will be released for distribution;
- (e) if there is an acceptable completion bond and insurance policy in place with industry recognized providers;
- (f) the credentials and references of the production company and its principals and producers;
- (g) the extent to which the production schedule follows a reasonable timeline leading to completion of the project;
- (h) the specific film locations planned in the District; and

- (i) the extent to which the applicant has complied with OMPTD application and information disclosure requirements.

Priority will be given to productions that hold the most promise for benefiting the District by hiring District residents, using local suppliers, being bonded and insured, and having a national distribution plan in place.

3101.5 STATUTORY DISQUALIFICATION

Any production company that fails to expend at least \$500,000 in the District and film for five (5) days or more in the District shall be statutorily disqualified from receiving grant funds.

3101.6 PROGRAMMATIC DISQUALIFICATION

Production companies may be disqualified from the Film DC Grant Program during the application process or after the Grant has received preliminary approval, based on programmatic considerations, at the discretion of the Director of the OMPTD, including, but not limited to:

- (a) Failure to begin production activities on the date specified in the Qualifying Production Letter;
- (b) A delay in principal photography that exceeds 30 days;
- (c) Failure to file any required reports;
- (d) Failure to pay industry standard wages;
- (e) Failure to submit, upon the conclusion of filming in the District, a certified accounting and cost report of production expenditures, prepared in accordance with generally accepted accounting principles, that is performed by an independent certified public accountant selected and paid for by the production company prior to the reimbursement of qualified expenditures. The production company is not precluded from engaging its regular independent certified public accountant, if applicable, to perform this activity;
- (f) Engaging in economic transactions, business relationships and business structures without substance for the purpose of increasing the amount of the incentives or altering the appearances of expenditures or vendors in order to meet the qualifications for the incentives;
- (g) Failure to practice responsible production practices or adhere to the Code of Conduct as specified in the California Film Commission's Filmmaker's Code of Professional Responsibility; or

(h) Lack of available funding.

3102 APPLICATION PROCEDURES

- 3102.1 The OMPTD will provide application forms upon request to production companies that anticipate applying for a grant from the Film DC Grant Program. The application will require that specific information be submitted concerning the production company, the production, production timelines, total anticipated expenditures, anticipated District expenditures and other pertinent information.
- 3102.2 All financial reports submitted to the OMPTD must be prepared in accordance with generally accepted accounting principles and certified by an authorized representative of the production company.
- 3102.3 The OMPTD will notify the production company of its grant funding determination in writing by sending a Qualifying Production Letter. The Qualifying Production Letter must be signed by a person authorized to sign on behalf of the production company and returned to the OMPTD within 20 business days of the date of the letter.
- 3102.4 In the event that a production company does not meet the minimum program requirements, or the grant application is not accepted or approved for any reason, the OMPTD will notify the production company in writing within 10 business days of its disapproval for the incentives.
- 3102.5 In order for the Government of the District of Columbia to reserve grant funds for the production company, the production company must begin verifiable production activity in the District within 60 days from the date of the Qualifying Production Letter and principal photography must begin within 30 days of the date specified in the Qualifying Production Letter.
- 3102.6 OMPTD will schedule a production planning meeting between the production company and OMPTD as soon as possible after it receives a signed copy of the Qualifying Production Letter.

3199 DEFINITIONS

- 3199 For purposes of this section, the following terms shall have the meanings ascribed:

“Film DC Grant Program” means the economic incentive grant program established by the Act.

"Production Company" means any individual, partnership, corporation or other business entity that is primarily responsible for the production of a film or television project.

"Qualified Expenses" means costs incurred in the District for the production of a film or television project including all expenses incurred in the District from vehicle rentals, camera equipment, costumes, wardrobe, construction materials, props, scenery materials, film and tape, design materials, special effects materials, fabrication, printing or production of scripts, storyboards, costumes, salaries paid to District residents, hotel expenses, food and alcohol purchases, restaurant expenses and related supplies and equipment.

"Qualified Production" means a film or television project that receives final approval for Film DC Grant Program funding.

"Qualifying Production Letter" means a letter to the program applicant from the OMPTD that contains a preliminary determination that the production qualifies for grant funding.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *Register*. Comments should be filed with the Office of Motion Picture and Television Development at 441 Fourth Street, N.W., Suite 760 North, Washington, D.C. 20001. Copies of these proposed rules may be obtained from the Office of Motion Picture and Television Development at the same address at no cost.